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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 18th March 2015

No. 2514—IR(ID)-122/2011-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 11th December 2014 in I.D. Case No. 17/2012 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the Management of Panchayat High School, At/P.O. Sisilo, Via. Balakati, Dist. Khurda-752100 and its Workman Shri Niranjana Mekap was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 17 OF 2012

Dated the 11th December 2014

Present :

Shri Saroj Kumar Sahoo, o.s.j.s. (Jr. Branch),
Presiding Officer, Labour Court,
Bhubaneswar.

Between :

The Management of . . . First Party—Management
Panchayat High School, At/P.O. Sisilo,
Via. Balakati, Dist. Khurda-752 100

And

Their Workman Shri Niranjana Mekap, . . . Second Party—Workman
At Kaijanga, Via. Balakati.
P.O. Sisilo, Dist. Khurda.

Appearances :

For the First Party—Management . . . R. K. Khuntia, Headmaster

For the Second Party—Workman . . . Niranjana Mekap
himself.

AWARD

The Government of Odisha in the Labour & E.S.I. Department, in exercise of powers conferred upon it by sub-section (5) of Section 12, read with Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (for short, 'the Act'), have referred the following dispute for adjudication by this Court vide their Letter No. 4600-IR (ID)-122-2011/LESI, dated the 12th June 2012.

“Whether the action of the management of Panchayat High School, Sisilo, Khurda in refusing employment to Shri Niranjana Mekap, Ex-Daptary-*cum*-Peon w.e.f. the 6th February 2010 is legal and/or justified ? If not, what relief Shri Mekap is entitled to ?”

1. The case of the second party workman is that after duly selected in an interview conducted by the first party management, he joined in his duty on the 18th March 1991 and continued till the 24th May 2002. He has completed more than 240 days continuous employment in a twelve calendar months. While he was in service under the first party management the second party workman was arrested by Baliantha Police in a false Police case and subsequently, released by the Hon'ble High Court on the 15th October 2009. As the second party was arrested all of a sudden he could not intimate about his arrest to the first party management. Within a period of 11 years of his service there was no stigma against him. He was in Jail custody from the 25th May 2002 to the 7th November 2009. He has not submitted any resignation on the 15th April 2004. The Headmaster Rabindra Kumar Khuntia had taken the signatures of the second party during his service on some blank papers, for the purpose of development of the school. The second party had raised an industrial dispute before the Labour Machinery. At that time, the management had produced a letter but subsequently, another letter was substituted in place of the letter submitted earlier. The signature of the Secretary and the date are forged on the letter. The resignation letter dated the 15th April 2004 has not been approved by the Managing Committee or any other authority. After release from custody the second party workman had submitted several representations to the first party management. One Prasanna Swain and Arta Behera who are juniors to the second party workman are continuing in service but the second party workman was illegally terminated from his service. Rabindra Khuntia, Clerk, Surendra Swain have prepared the false resignation letter. The second party workman has prayed for his reinstatement in service along with back wages and all other service benefits.

2. The case of the first party management is that the reference is bad in the eye of law and not maintainable. The organisation of the first party management is an educational institution established by accepting contributions from the villagers. Subsequently, the Government of Odisha pleased to provide grant-in-aid to the High School with limited staff strength. There were four number of posts of non-teaching staffs such as Daptary, Office Peon, Science Attendant and Watchman-*cum*-Sweeper. The Government of Odisha, Education Department vide letter No. 5354, dated the 18th December 1980 has sanctioned all the above posts. There was no allocation of fund by the Government towards the salary of the staffs. As the school management on donation from the public there was no fund for salary of Daptary and all other non-teaching staffs. The second party workman who was convicted in a criminal case for which he had submitted his resignation on the

15th April 2004 which was accepted by the Managing Committee vide its Resolution dated the 2nd May 2004. There is no termination of service of the second party by the first party management. The appointment of the second party as Daptari was terminable without assigning any reason by the management. The Government of Odisha vide Notification dated the 5th February 2004 reduced the strength of non-teaching staff and approved only one post of Peon for the School. After much persuasion by the management the Government of Odisha by an order dated the 8th December 2008 approved the posts of one Watchman-*cum*-Sweeper, one Science Attendant and one Office Peon. The post of Daptary has been abolished. So there is no post of Daptary in the first party organisation. After the release of the second party from custody by judgement dated the 15th October 2009 he claimed to resume to his duty which was not considered by the first party management due to non-availability of the posts. The authority has got prerogative to create and abolish the post. The question of compliance of Section 25-F and 25-G of I.D. Act, 1947 is not applicable to the case of the second party. The second party workman had sent his resignation to the Managing Committee while he was in judicial custody and after acceptance of the same the father of the second party workman has received a sum of Rs. 10,000 from the management which was deposited as donation. After filing a petition before the Labour Machinery only on the 21st August 2010 the second party workman had submitted a representation before the management. Due to the resignation of the second party he ceased his seniority on the 15th April 2004. Prior to his resignation, the name of none of the juniors to him was sent for approval by the Government. There was no refusal of employment of the second party workman by the management. The second party is not entitled to any relief.

3. In view of the rival claim of the parties, the following issues are settled :

ISSUES

(i) "Whether the action of the Management of Panchayat High School, Sisilo, Khurda in refusing employment to Shri Niranjan Mekap, Ex-Daptary-*cum*-Peon w.e.f. the 6th February 2010 is legal and/or justified ?

(ii) If not, what relief Shri Mekap is entitled to ?"

4. The workman is examined as W.W. 1 and Exts.1 to 3 are marked. Ext. 1 is the photo copy of the appointment letter issued to the second party by the first party management on the 18th March 1991. Ext.2 is the resignation letter. Ext. 3 is the affidavit of the workman. One Sudarsana Nayak is examined as W.W. 2. On the other hand two witnesses are examined on behalf of the management Exts. A to Q are marked. Ext.A is the office copy of appointment letter. Ext. B is the joining report of the workman and Ext. C is the resignation letter. Ext. D is the money receipt executed by the father of the second party. Ext E is the Resolution No. 22, dated the 17th March 1991 and Ext F is the Resolution No. 100, dated the 2nd May 2004 of the Managing Committee of the School. Ext. G is the letter No. 33, dated the 2nd January 2009 issued by Inspector of Schools to the Headmaster of Panchayat High School, Sisilo. Ext. H is letter No. 16, dated the

2nd February 2009 of Headmaster to Inspector of Schools. Ext. J is office Order No. 8281, dated the 25th May 2009 of Inspectors of Schools, Khurda Circle. Ext. K is Resolution No. 3, dated the 25th June 1989. Ext. L is office Order No. 35 W-5-91-4136, dated the 25th November 1991 of Director, Secondary Education, Odisha communicated to the Secretary of the first party organisation vide Memo No. 10899, dated the 10th December 1991. Ext. M is the office Order No. 10710, dated the 23rd August 2004 of Inspector of Schools, Khurda Circle communicated to the Headmaster of the first party organisation vide Memo No. 10711, dated the 23rd August 2004. Ext. N is the copy of the Gazette Notification dated the 5th February 2004 of Department of School and Mass Education. Ext. P is the order dated the 10th March 2008 of Hon'ble Governor through Commissioner-*cum*-Secretary to Government. Ext. Q is the Order of the Hon'ble Governor through Principal Secretary to Government dated the 8th December 2008.

FINDINGS

5. ISSUE Nos. (i) and (ii)—For the sake of convenience and to avoid repetition both the issues are taken up together for discussion. From the reference of the Government of Odisha, Labour and E.S.I. Department, it transpires that the first party management has refused employment to the second party workman who was Ex-Daptary-*cum*-Peon with effect from the 6th February 2010. At Paragraph-5 of his claim statement the second party has also mentioned that his service was terminated by the first party management with effect from the 6th February 2010 which was illegal. On the other hand, it is specific plea of the first party management in the written statement that while the second party workman was in Jail custody and convicted in a criminal case, he had sent his resignation dated the 15th April 2004 to the Managing Committee of the first party organisation which was accepted. It is also claimed by the first party management that as the second party has resigned from his service there is no question of compliance of the provisions of the Industrial Disputes Act, 1947 or the reinstatement of the second party. The second party workman is examined as W.W. 1. In his affidavit evidence at Paragraph-5, he admitted that during course of his employment under the first party organisation, the first party had taken his signature on blank papers for sanction of the post, which has been converted to his resignation letter. During his cross examination at Paragraph-12 it is stated by the second party workman that in the year 2008 while he was in Jharpada Jail the Headmaster R. K. Khuntia and the Peon had been to the Jail and obtained his signatures on 5 blank papers after obtaining due permission from the Jail Authority. M.W. 1 has proved the resignation letter of the second party workman which has been marked as Ext. C. During cross examination, the second party W.W. 1 admitted his signature on the resignation letter which has been marked on admission as Ext. C/1. On perusal of Ext. C, it is clear that there is no endorsement or counter signature of the Jail Authority on the resignation letter. When in his claim statement and in his examination-in-chief, the second party workman W.W.1 admitted that the first party management had obtained his signatures on blank papers during his service, in his cross examination he came with another plea that the Headmaster and Peon has obtained his signatures on blank papers while he was in Jail in the year 2008. It appears from the evidence of M.W. 2 that the father of the workman had submitted the resignation letter of the workman to the first party.

W.W. 1 in his evidence during his cross examination at Paragraph-17 deposed that the father of the second party workman did not agree to be a witness for the management for which he could not be examined. Admittedly, the father of the second party workman is not examined by the management. However, W.W. 1 has proved the resignation letter of the second party and the second party has also admitted his signature on the resignation letter. The second party has not examined his father to demolish the evidence led by the first party management. It is also deposed by the witnesses examined on behalf of the management that the donation amount of Rs. 10,000 has been received by the father of the second party after executing a money receipt while the second party was in judicial custody. Ext. D the money receipt has been proved by M.W. 1. He has clearly deposed that the father of the second party workman has executed a money receipt, Ext. D and D/1 is his signature. On perusal of Ext. D it is clear that after resignation of the second party from his service, on the 20th September 2008, the father of the second party has received a sum of Rs. 10,000, i.e. the donation amount from the first party management. Ext. F is Resolution No. 100, dated the 2nd May 2004 of the first party management. On perusal of Ext. F, it is clear that the resignation letter which was submitted by the second party workman was accepted by the Managing Committee on the 2nd May 2004. So after going through the evidence on record, it is clear that the second party workman has resigned from his service by submitting his resignation and he was not retrenched or terminated by the first party management.

6. In his statement of claim, the second party workman has mentioned that he was selected for the post of Peon-*cum*-Daptary by the Managing Committee. In his evidence he has also deposed that he was appointed as Peon-*cum*-Daptary by the first party management. Ext. 1 is the photo copy of the appointment letter issued to the second party workman by the first party management. It has been proved by the second party workman during his examination-in-chief on oath. On perusal of Ext. 1 it is clear that the second party workman was appointed as Daptary against a temporary post which can be terminable at any time without prior notice and assigning any reason. Both the witnesses examined on behalf of the management testified that the second party workman was appointed as Daptary. Ext. E is the Resolution No. 22, dated the 17th March 1991 which has been proved by M.W. 1. On perusal of Ext. E it is clear that the second party workman was appointed as Daptary, one Prasanna Kumar Swain as Science Attendant and Artatrana Behera as Night Watcher-*cum*-Sweeper. Ext. B is the joining report submitted by the second party workman dated the 19th March 1991. It is also clear from Ext. B that only on the 19th March 1991 forenoon the second party joined as Daptary under the first party management. It is the specific case of the management that the post of Daptary has been abolished by the Government. On perusal of Ext. G which is a letter issued to the Headmaster of the first party management by the Inspector of Schools, Khurda Circle it is clear that the Government had been pleased to accord necessary approval in favour of the post of an office Peon, a Science Attendant and a Watchman-*cum*-Sweeper. Exts. J, M, N, P and Q also shows that the post of Daptary was not approved by the Government. It is also admitted that the second party workman was in Jail custody while the post of Daptary was not approved by the Government. The first party management has relied on pronouncements reported in 1997-II-LLI-

677 (Supreme Court) Joya Chan M. Sebastian-vrs.-The Director General and others and 1996(II) LLI-1245 B. Krishna Murty-vrs.-Chairman, Madras Port Trust and another and submitted that due to abolition of the post of Daptary the second party workman cannot be reinstated in service. After going through the pronouncements relied on by the first party management and taking into consideration the facts of this case there is no question of reinstatement of the second party workman due to non-approval of the post of Daptary by the Government.

7. As the second party workman has resigned from his service there is no necessity on the part of the first party management to comply Sections 25-F, 25-G or any other provision of I.D. Act, 1947. There is no termination or refusal of employment of the service of the second party workman by the first party management with effect from the 6th February 2010. In view of resignation of the second party workman he is also not entitled to any relief or reliefs.

The reference is disposed of accordingly

Dictated and corrected by me.

S. K. SAHOO

11-12-2014

Presiding Officer
Labour Court, Bhubaneswar.

S. K. SAHOO

11-12-2014

Presiding Officer
Labour Court, Bhubaneswar.

By order of the Governor

M. NAYAK

Under-Secretary to Government

